

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3905 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DASHRATHBHAI P PATEL

Versus

ADDITIONAL DEVELOPMENT COMMISSIONER

Appearance:

MR. Unwala with MR PK Jani for Petitioner
Ms.Harsha Devani, A.G.P. for respondent No.1 & 3
MR AD PADIVAL for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 17/12/96

ORAL JUDGEMENT

In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the order (Annexure : J) dated 29.3.1996 whereby the Additional Development Commissioner being the Appellate Authority, under Section 57(3) of the Gujarat Panchayats Act, 1993, directed the respondent No.2 Mr.Sharadbhai N. Patel being made a party to the Appeal proceeding.

2. The facts as alleged in the petition and briefly stated in the synopsis may be noted :

The petitioner is the Sarpanch of Rancherda Gram Panchayat, Taluka Kalol, District Mehsana. He was served with a show cause notice for the alleged misconduct. The petitioner gave reply to the said show cause notice. It is the case of the petitioner that without taking into consideration the contentions raised by the petitioner in his reply the District Development Officer passed an order of petitioner's removal on or around 7.8.1995. The petitioner challenged the said order by way of preferring an Appeal before the Development Commissioner. At the relevant point of time since the Development Commissioner was not available the petitioner could not obtain the stay of the aforesaid order. Therefore, the petitioner approached this Court by way of filing Special Civil Application No.13 of 1996 and this Court granted the stay of the aforesaid order of petitioner's removal. Thereafter when the Development Commissioner was available the petitioner approached the Development Commissioner and the stay of the order passed by the District Development Officer was granted. When the Appeal came up for hearing before the Development Commissioner, the respondent No.2 herein, who is a resident of village Rancherda, Taluka Kalol, District Mehsana and who was defeated by the petitioner in the election for the post of Sarpanch, gave application dated 3.2.1996 for being joined as party in the Appeal preferred by the petitioner. The petitioner strongly objected against the said application. However, the Additional Development Commissioner by his impugned order dated 29.3.1996 allowed the application and directed the joinder of respondent No.2 as party to the said Appeal. That is how the petitioner is before this Court as stated above.

3. The respondent No.2 has moved the Civil Application No. 5667 of 1996 for vacating the ad.interim relief granted in the main matter inter alia stating that the petitioner has committed number of irregularities and illegalities in the discharge of his duties as Sarpanch, by abusing, overusing and misusing his powers. It is alleged by the respondent No.2 that the petitioner, without seeking the approval of the State Government, passed number of resolutions conferring Gamtal land for the purpose other than for which such land has been meant. It has further been alleged that without verifying the relevant documents names of particular persons have been approved in respect of particular properties, one of the properties being House No.76. According to respondent No.2 he was person the who set

the law in motion by making representation in respect of the alleged illegalities and irregularities stated by him and others to have been committed by the petitioner. He accordingly supports the impugned order passed by the Additional Development Commissioner.

4. I have heard Mr.Unwala, learned Advocate, appearing for Mr.P.K.Jani, for the petitioner, and Mr.A.D.Padival, learned Advocate appearing for Respondent No.2. The learned A.G.P. has supported the impugned order passed by the Additional Development Commissioner.

5. It has been submitted on behalf of the petitioner that if the persons like respondent No.2 are allowed to be joined in the Appeal proceeding undertaken by the petitioner, the appeal proceeding would be burdened with thousands of villagers. This submission is made on the ground that the Appeal which is pending before the Development Commissioner is against the order of the Lower Authority, who had referred to the application moved by person other than the respondent No.2. However, on a reference to the order passed by the lower Authority it could be visualised that there has been reference made to a report of Taluka Development Officer and such report saw the light of the day on account of some application/representation having been moved by the respondent. On a reference to the impugned order it can also be seen that reference to the report of the Taluka Development Officer has been made and it has also been recited that such report saw the light of the day as a result of the representation made by the respondent No.2 and other persons. In that view of the matter the Appellate Authority came to the conclusion that respondent No.2 would be a necessary/proper party who could be heard particularly when such party wanted to be heard.

5. In the background of the aforesaid facts the decision which has been referred to now be considered. Mr. Unwala, learned Advocate appearing on behalf of Mr.P.K.Jani, learned Advocate for the petitioner has made reference to the decision of this Court in the case of Noormohmad Hajishama V/s. Anand Mohan Bhardwaj, reported in XXII (1981) G.L.R. 332. Reference has been made to a decision of the Apex Court in the case of Udit Narain Singh Malpaharia V/s. Additional Member Board of Revenue, Bihar & anr., AIR 1963 SC 786. Dealing with the provision contained in Order : 1, Rule 10 (2) of the Code of Civil Procedure, the observations of the Apex Court appearing in Para : 7 of the citation have been reproduced :

"The law on the subject is well settled; it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

Reference has then be made to two decisions in the case of Muslim Wakf Board, Bhopal & anr. V/s. Municipal Board, Bhopal, A.I.R. 1960 Madhya Pradesh 249 and a decision of this Court in the case of Ambalal Maganlal Rawal V/s. Vaghari Bababhai Shivabhai & anr., (1974) 11 Gujarat Law Times 215. It has been observed from the said decisions that as a rule the Court should not add a person as a defendant in a suit when the plaintiff is opposed to such addition. The reason is that the plaintiff is the dominus litis and that he being the master of the Suit cannot be compelled to fight against a person against whom he does not wish to fight and against whom he does not claim any relief. This Court concluded that Order : 1, Rule 10, Rub Rule (2) it invests the Court with discretion to add a party as co-defendant to the Suit and ordinarily the discretion will not be exercised in the face of opposition from the plaintiff. It is observed that the addition of a party confers certain rights on the added party, such as a right to appeal, etc., and it would not be proper, in a case where the presence of the party is not absolutely necessary to lightly implead him and thereby impose consequential obligation on the plaintiff.

6. In the present case the Appeal is directed against the order of District Development Officer, who acted on the application of particular party and the report of the Taluka Development Officer which saw the light of the day at the instance of respondent No.2 and other persons. It is in the background of such type of proceeding before the Appellate Authority that Mr. A.D.Padival, learned Advocate for respondent No.2 made a reference to a decision rendered by Division Bench of this Court in the case of Punjabhai Dahyabhai Patel V/s. Shah Jayantilal Manilal and others, reported in VI (1965) G.L.R. 849. The facts before the Court in that case would indicate that petitioner there, a Councillor of the Nadiad Borough Municipality, sent to the Collector of Kaira, an application dated 6.3.1964 requesting him to inquire and disqualify respondent No.1 there, Shri J.M.Shah, from his continuance as a Councillor of the said Nadiad Borough Municipality, on the ground that he

had absented himself for four successive months at the meetings duly held by the Municipality of Nadiad without the leave of the Municipality as required under Section 28(1)(d) of the Bombay Municipal Boroughs Act, 1925. Acting under Section 28(2) of the said Act the Collector made suitable inquiries and finding the facts alleged in the application issued show cause notice to the petitioner calling upon him why he should not be disqualified as a Councillor, and in an inquiry held in that respect the Collector declared the said party as disqualified and disabled from continuing as a Councillor of the said Municipality by virtue of the finding of his office having fallen vacant. Aggrieved by that order the said respondent preferred Appeal under Section 28(2) of the Old Act to the State Government. In that Appeal the State Government set aside the order of the Collector. It is against the said order of the State Government that the petitioner before the Division Bench filed writ petition praying for an appropriate writ for quashing the said order. One of the contentions that was raised before the Division Bench was that the order of the State Government was null and void inasmuch as rules of natural justice were violated as the petitioner who can be easily said to be an interested, or aggrieved party in the matter, had not been even informed of the hearing of the Appeal or given any opportunity of being heard or even presenting his case before setting aside the order passed by the Collector. It has been observed by this Court that the State Government was an Appellate Authority constituted under Section 28(2) of the old Act against the orders passed by the Collector under Section 28(1) of the said Act and that, therefore, it had to act fairly and judicially and not in an administrative capacity. In the case before the Division Bench the right came to be claimed by the petitioner who was alleged to be not affected by the order in the sense that question of disqualification did not affect him personally. In the face of such a submission it has been observed that if the petitioner was a person who could be said to be interested in the decision of the matter he would be an aggrieved party if the order of the Collector is set aside. Referring to the decision of the Apex Court in the case of Ebrahim Aboobakar V/s. Custodian General of Evacuee Property (1952) 3 S.C.R. 696 and in the case of Ramji V/s. Manilal, reported in 1 G.L.R. 53, it was held that the State Government while exercising its power of hearing an appeal under a statute, is a quasi-judicial authority and it has a duty cast upon it to act judicially. Such a duty inherently requires such quasi-judicial authority even to give each of the parties to a dispute an opportunity of adequately presenting his

case, before any decision is given. Following observations would assume importance in the present matter:

"That right of being given an opportunity of hearing is to both sides, and a person such as the one in the present case before us, was interested in the decision of the matter by reason of his being a person complaining or moving the appropriate authority to decide the matter, apart from his being interested in the matter as a Councillor of the Municipality of which the person proceeded against was a Councillor of the same Municipality."

7. In my opinion the aforesaid observations of the Division Bench in the case of Punjabhai V/s. Jayantilal (Supra) would hold the field in the facts of the present case and it can hardly be said that there is any jurisdictional error or error of law committed by the Appellate Authority while allowing the respondent No.2's application to join him as party. The provision under which the proceedings have been initiated and the Appeal has been filed in the present case are as contained in Section 57 of the Gujarat Panchayats Act, 1963 and Section 32 is wide enough to cover a person who is in a position of a complaining party and, therefore, such a person would obviously be an interested person in the decision of the Appellate Authority.

8. In the facts of the case, therefore, this is not a fit case where the impugned order could be faulted in exercise of jurisdiction under Article 226/227 of the Constitution of India.

9. Hence in the above view of the matter Rule is discharged. Interim relief is vacated with a direction that the Appeal shall now be decided in accordance with law after hearing both, the petitioners as well as respondent No.2, as expeditiously as possible. No order as to costs.

10. Mr.J.S.Unwala, learned Advocate appearing for Mr.P.K.Jani, prays for stay of the aforesaid order and continuance of the interim relief for a period of four weeks.

Heard Mr.Unwala, learned Advocate for the petitioner. Mr.Padival is not present. The request for extension of interim relief, as stated above, is hereby granted.

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